79-6190

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IN THE SUPREME COURT OF THE UNITED STATES

TERM, 1980

No.

TIMOTHY DALE CRAWFORD,

Petitioner.

v.

STATE OF ALABAMA,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant, Timothy Dale Crawford, moves the Court for an order permitting him to proceed in this Court, in forma pauperis, with his appeal from the judgment of the Supreme Court of the State of Alabama entered in this cause on December 7, 1979, pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 53 of the Rules of this Court, and in support thereof attaches the affidavit of said appellant.

Appellant's statement as to jurisdiction is being filed with this motion and appellant's affidavit.

SAMUEL L. ADAMS
ADAMS & BATES
Attorney for Appellant
P.O. Box 1690
Dothan, Alabama 36302

Samuel L. Adams

AFFIDAVIT

IN THE SUPREME COURT OF THE UNITED STATES

TERM, 1980

No.

TIMOTHY DALE CRAWFORD,

Petitioner.

v.

STATE OF ALABAMA,

Respondent.

AFFIDAVIT OF SAMUEL L. ADAMS, ATTORNEY FOR PETITIONER

Samuel L. Adams, being duly sworn, deposes and says:

1. Timothy Dale Crawford is a citizen of the United States and the petitioner in the above-entitled action.

2. Timothy Dale Crawford desires to prosecute an appeal from the judgment entered by the Supreme Court of the State of Alabama, on December 7, 1979, pursuant to 28 U.S.C. 1257 (2), but because of his poverty he is unable to pay the costs of such appeal or give security therefor.

3. He has been unable to obtain a certified copy of the record in the court below without payment of fees and costs.

4. He is presently confined in the William C. Holman Unit of the Prison System at Atmore in Escambia County, Alabama, awaiting execution set for Friday, March 14, 1980 and he has no money or property with which to pay any costs in this proceeding. His appointed counsel in the Courts below is prosecuting this appeal at petitioner's request and has received no money for said appeal nor does he expect any payment for said Petition for Writ of Certiorari.

5. He believes that he is entitled to the redress he seeks by such an appeal, and that such an appeal presents substantial federal questions.

The nature of the questions to be presented upon such appeal is as follows: (1) The constitutionality of Section 13-11-1 et. seq., Code of Alabama (1975) under the eighth and fourteenth amendments to the constitution of the United States and the validity of the admission into evidence of certain testimony obtained in violation of the sixth amendment to the constitution of the United States.

He contends that the Supreme Court of the State of Alabama erred in holding that said Statutes were constitutional and that the evidence was properly admitted.

WHEREFORE, affiant prays that he may have leave to proceed in this Court on appeal in forma pauperis.

Samuel L. Adams

Sworn to and subscribed before me this the 3rd day of March, 1980.

My Commission Expires: 12/1/83 NOTARY PUBLIC

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1980

No.

TIMOTHY DALE CRAWFORD, Petitioner,

v.

STATE OF ALABAMA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1980

No.

TIMOTHY DALE CRAWFORD,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

Petitioner Timothy Dale Crawford prays that a writ for certiorari issue to review the Judgment of the Supreme Court of Alabama affirming his conviction and sentence to death. The Judgment of the Supreme Court of Alabama was entered on December 7, 1979.

Opinions Below

The opinion of the Supreme Court of Alabama, reported at 377 So. 2d. 159 (Alabama. 1979) and is attached as Appendix A. The Supreme Court affirmed an opinion of the Court of Criminal Appeals of Alabama, as reported at 377 So. 2d 145 (Alabama Criminal Appellate 1979) and is attached as Appendix B.

Jurisdiction

The Judgment and opinion of the Supreme Court of Alabama was entered on December 7, 1979. On December 20, 1979, the Supreme Court of Alabama entered an order setting March 14, 1980 as the date for petitioner's electrocution. This Court has jurisdiction to review the Judgment below for writ of certiorari pursuant to 28 U.S.C. § 1257 (3).

Questions Presented

The Alabama death penalty statute, § 13-11-1 et seq., Alabama Code (1975), under which petitioner and other prisoners have been convicted of capital crimes and sentenced to death, raises important constitutional questions:

1. WHETHER ALABAMA'S REFUSAL TO ALLOW THE JURY TO FIND A CAPITAL DEFENDANT GUILTY OF A LESSER INCLUDED OFFENSE VIOLATED RIGHTS UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

Unlike any other death penalty statute in the United States, Alabama's law precludes juries from considering whether defendants charged with capital offenses are guilty of a less included offense. In Keeble v. United States, 412 U.S. 205, 213 (1973), a non capital case, this Court held that any statute which foreclosed juries from receiving a lesser-offense instruction "would raise difficult constitutional questions." By forcing capital juries to make an all-or-nothing choice on the issue of guilt, Alabama's death penalty statute has produced startling results. Of the first 50 defendants who pleaded not guilty and were tried under the law, 48 were convicted.[1] Since Alabama continues to permit lesser-offense instructions in non-capital cases, it's death penalty statute raises the question whether capital defendants may be singled out for deprivation of an important procedural safeguard.

2. WHETHER ALABAMA'S REQUIREMENT IN CAPITAL CASES THAT THEY THE JURY "SHALL" SENTENCE DEFENDANTS TO DEATH UPON A VERDICT OF GUILTY WITHOUT CONSIDERATION OF MILIGATING CIRCUMSTANCES VIOLATES PETITIONER'S RIGHTS UNDER THAT DUE PROCESS CLAUSE AND UNDER THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT.

This provision of Alabama's law presents for this Court's determination (a) whether the principles set forth in Woodson v. North Carolina, 428 U.S. 280 (1978), forbid a mandatory death sentence by a trial jury, which may affect materially the subsequent review of the jury's sentence by the trial judge, and (b) the question reserved in this Court's decision in Lockett v. Ohio, 90 S.Ct. 2954,2967. n. 16 (1978), whether the Constitution requires that the jury, rather than judge alone, have an opportunity for consideration of mitigating circumstances which this Court also held in Woodson is virtually always and essential prerequisite of a constitutional death sentence.

3. WHETHER ALABAMA'S DEATH PENALTY STATUTE VIOLATES THE DUE PROCESS CLAUSE BY POSTPONING CONSIDERATION OF SENTENCE BY THE TRIAL JUDGE UNTIL THE JURY HAS MANDATORILY

[1] Respondents brief and opposition to petition for a writ of certiorari, Jacobs v. Alabama (U.S., October Term, 1978, No. 78-5696), at 10, 35.

MADE AN INITIAL DETERMINATION THAT THE DEATH PENALTY "SHALL" BE IMPOSED.

This provision of Alabama's law places the trial judge's sentencing determination under the cloud of the jury's initial mandatory death sentence and thus raises the question whether it is consistent with this Court's holding that "any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." Gardner v. Florida, 431 U.S. 349, 358 (1977).

4. WHETHER ALABAMA'S DEATH PENALTY STATUTE IS SO VAGUE AND HAS BEEN APPLIED SO INCONSISTENTLY THAT IT VIOLATES PETITIONER'S RIGHTS TO REASONABLE NOTICE UNDER THE DUE PROCESS CLAUSE AND INFRINGES ON HIS RIGHT UNDER THE EIGHTH AMENDMENT NOT TO HAVE THE DEATH PENALTY IMPOSES IN AN ARBITRARY, WANTON, UNRELIABLE OR DISCRIMINATORY MANNER.

Two of the aggravating circumstances specified in Alabama's law for consideration by the trial judge (1) Whether the offense was "especially heinois, atrocious, or cruel" and (2) That the defendant "knowingly created a great risk of death to many persons" are vague and have been inconsistently applied, and raises the question of whether and to what extent the void-for-vaguness doctrine should be invoked with respect to sentencihg provisions in a capital punishment statute.

5. WHETHER THE OVERALL OPERATION OF ALABAMA'S DEATH PENALTY STATUTE ENCOURAGES SUCH UNRELIABLE FINDINGS ON THE ISSUES OF GUILT AND SENTENCE AND IS SO FUNDAMENTALLY UNFAIR THAT IT VIOLATES PETITIONER'S RIGHTS UNDER THE DUE PROCESS AND CRUEL AND UNUSUAL PUNISHMENT CLAUSES.

By stripping petitioner of vital procedural safeguards at each stage of the capital punishment proceedings, Alabama's death penalty statute has "stacked the deck" against the petitioner in violation of this Court's ruling in Witherspoon v. Illinois, 391 U.S. 510, 522, N.22. 523 (1968), that the capital punishment decision cannot be made on "scales deliberately tipped toward death."

In addition to the question presented as to the constitutionality of the Alabama death penalty statute petitioner would raise the following constitutional questions:

6. WHETHER EVIDENCE OBTAINED FROM THE PETITIONER AFTER INDICTMENT BY SECRET INTERROGATION BY AN AGENT FOR POLICE OFFICERS AND DISTRICT ATTORNEY VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL.

By covert conduct and sending in a prisoner in the Houston County Jail with a radio transmitter concealed on his person with the sole purpose of encouraging him to engage in a conversation with petitioner constituted a secret interrogation of petitioner after indictment which contravened the basic dictates of fairness in the conduct of criminal cases and the fundamental rights of a person charged with a crime in violation of the sixth amendment of the constitution. Massiah v. U.S., 377 U.S. 210; at it's least and certainly circumvent the dictates of this case.

7. WHETHER EXTRAJUDICIAL CONFESSIONS OBTAINED FROM APPELLANT WERE INADMISSIBLE IN THAT THEY WERE OBTAINED IN VIOLATION OF THE FOURTEETH AMENDMENT TO THE CONSTITUTION.

Petitioner was held and kept in custody for approximately thirty-six hours and was continously interrogated concerning the crimes committed in this case. The length of time that he was questioned raises serious constitutional questions of due process according to the fourteeth amendment of the constitution. Ashcraft v. Tennessee, 322 U.S. 143.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(1) This case involves the sixth, eighth, and the fourteeth Amendments to the Constitution of the United States.

(2) This case involves the following provisions of Alabama law; Sections 13-11-1 through Sections 13-11-9, Code of Alabama (1975); Sections 15-17-1, Code of Alabama (1975). These statutes are set forth as Appendix C to this petition.

Statement of Case

Petitioner was indicted by the Houston County, Alabama Grand Jury on charges as "murder in the first degree wherein two or more human beings are intentionally killed by the defendant by one or a series of acts." The following is an abstract of evident:

Shortly after midnight on October 7, 1977, Houston County Sheriff's Deputies responded to a disturbance at the Hughes residence in Taylor, Alabama, and the Crawford's residence in Rehobeth, Alabama.

At the Hughes residence, Beverly Hughes Crawford was found lying in a bed with gun shot wounds to the stomach and head. Her red Toyota automobile was found in the front of the house. The windows to the Toyota were shattered and what appeared to be bullet holes were found in the right front door and the head rest on the driver's side.

At the Crawford's residence, petitioner and his mother, Pauline Crawford were found lying on the floor of Pauline's home within a few feet of each other. Both were alive and suffering from gun shot wounds.

At approximately 2:00 A.M., Charles Crawford, brother of petitioner was found on the Crawford farm out in the field lying next to a fence. He was shot in the back and paralyzed, but still alive. About one hour later appellant's father, Eddie Roy Crawford, was found dead in an Old Colonial Bread truck body that had been converted to a peanut dryer located near by his residence. Eddie Roy had been shot twice in the head.

The bodies of Brenda Crawford, sister of appellant and her daughter, Chris, age six, were discovered at approximately 9:00 A.M. about 100 yards off Alabama Highway 109 at the intersection of that highway and U.S. Highway 231, Houston County, Alabama. Both had multiple gun shot wounds. Devana and Eddie Peters, two small children of Brenda's were found lying on top of their mother. Both children were unharmed other than suffering from insect bites.

At the trial of the case, Charles Crawford testified that on the night of October 6, 1977, the Crawford family had eaten supper together on the Crawford farm. All of the victims of the case were present at the supper meal. Charles and his wife left soon after the meal and returned to their trailer for remainder of the night. At approximately 11:00 P.M., Charles was awakened by a knock on his bedroom window by the petitioner. The petitioner said that the cows had gotten out and that grandfather wanted them to find the cows. Charles left with the petitioner in petitioner's truck. During the course of riding around the farm the petitioner asked Charles several times to get out and look for tracks. Charles finally relented and as he walked next to an electric fence he heard the blast of a rifle, felt a sting, and fell to the ground paralyzed. He then heard the truck door shut and the truck drive off.

Beverly Hughes Crawford testified that she went back to sleep after her husband and petitioner left to look for the cows. The next thing that she remembers was that petitioner again knocked at the window saying that Charles has sent him back for the shotgun. When the petitioner came into the front door to get the shotgun, Beverly noticed that he had Charles' rifle. As she walked to the bedroom to look for more cartridges for the guns, she was shot from behind. The petitioner stated that he was sorry, that it was an accident, and that he had been shot also. Beverly did not see any blood on him. She told the petitioner that she was bleeding to death and for him to find Charles. He then left.

Beverly laid on the bed in the trailer for indeterminate length of time. She then got into her Toyota automobile and attempted to leave to her parent's home in Taylor, several miles up the road. The petitioner appeared at her automobile opened the door and took her by the arm, and said that he would help her back into the trailer, he then walked to his truck and got something out through the window. Beverly left in her automobile stopping as she pulled into the road to see if she could see what the petitioner was doing at that point, she was hit in the neck with a gun shot that also shattered her automobile window. She left for her parents home driving at a speed of approximately 80 miles per hour. After Beverly ran inside her parents home, she saw petitioner drive up in front of the house holding the rifle. The petitioner then left.

Kenneth Turvin testified that he was driving on the Taylor to Tabernacle Road between Rehobeth and Taylor at approximately 11:45 P.M. on October 6, 1977. He testified that two vehicles passed him at speeds estimated to be 80 miles per hour. He identified pictures of Beverly's Toyota and the petitioner's truck as the vehicles that passed him.

Dr. Joe Sugg, a surgeon, testified that he removed part of Beverly's liver and gallbladdar as a result of the gun shot wound. He also treated the petitioner for minor wounds to the armpit. There are large powder burns on the petitioners indicating that the weapon has been placed next to the skin and fired.

Steve Lynn Langley testified that he went to the petitioner's trailer at approximately 9:00 or 9:30 P.M. on October 6, 1977. The petitioner's truck was backed up to his trailer and he was pulling out into the road. Two small children were standing up in the seat of the truck beside the petitioner. Langley could not see down into the truck. The petitioner said he was going to help his mother and daddy move peanut trailers to Headland. Langley said that he had seen a box of rifle cartridges on the dash of the petitioner's truck the day before.

During the investigation of the case, petitioner made four statements to law enforcement authorities. In the last two statements, the petitioner confessed to the murders and gave the officers the location of the rifle used in the crime.

THE TRIAL COURTS INSTRUCTIONS TO THE JURY

The trial judge's charge did not permit the jury to convict petitioner on the lesser included offenses of murder or manslaughter. Under the Alabama statute, the trial judges charge gave the jurors only two alternatives; voting either for acquittal or for conviction of the capital crime of murder in the first degree wherein two are more than human beings were intentionally killed by one or a series of acts. (TR 1057,1058)

By virtue of the trial court's charge the jury was foreclosed from finding the petitioner guilty of any other crime other than capital murder; no subsequent charge could be brought on lesser offenses such as murder or manslaughter. Under the judge's instructions, the jury was legally pressured into finding petitioner guilty of a capital offense even, if, they really believed that he was guilty only of murder or manslaughter.

On the issue of sentencing, the trial judge instructed the jury that it was mandatory to impose the sentence of death upon a finding of guilt. The Court charged the jury as follows "that if you are convicted beyond a reasonable doubt that this defendant unlawfully and with malice aforethought or premeditation and deliberation willfully and intentionally killed Brenda Crawford Peters, Chris Peters, and Eddie Roy Peters by shooting them with a rifle by one or a series of acts at the time and on the occassion as testified to be the witnesses in this case. If you should find this defendant here guilty, the form of your verdict would be: We the jury, find the defendant Timothy Dale Crawford guilty of murder in first degree

wherein two or more human beings were intentionally killed by one or a series of acts that are charge in the indictment. We fix his punishment at death. That is the only punishment that you can fix." TR 1057

Following the jury's guilty verdict and sentence to death (TR160), the trial judge scheduled a hearing to consider aggravating and mitigating circumstances and to decide whether to accept the death sentence as fixed by the jury (TR.1061). Upon a hearing before the judge, he denied petitioner's motion to empanel a jury to consider aggravating and mitigating circumstances. (TR.1137).

Following oral argument, the trial judge made a finding of aggravating circumstances pursuant to the Alabama death penalty law, including the following corresponding to § 13-11-6 of Alabama's law "The defendant knowingly created a great risk of death to many persons; and "the capital felony was especially heinois, atrocious, or cruel." The finding that this crime was especially heinois, atrocious, or cruel under the provisions of § 13-11-6(8), was an error as there was no evidence that any of the victims were tortured or treated cruelly. The cause of death for each was gun shot wounds and the facts do not support the finding that the crime was a pitiless crime which is unnecessary tortuous to the victims which is a limiting construction placed on the aggravating circumstances by the Florida Supreme Court. State v. Dickinson, 283 So. 2d, 1(FLA). If the construction placed on this aggravating circumstance is permitted to stand then virtually every homicide could be found to be especially heinous, atrocious, or cruel. A judge could the "arbitrarily" pick and choose those cases wherein he would support his death sentence through the use of that aggravating circumstance. Clearly the facts in this case of the aggravating circumstances are too vague and overboard to pass the constitutional muster. Further, the judge's finding that defendant knowingly created a great risk of death to may persons is equally in error and was arbitrarily applied to this case. It is clear that the legislative intent of the statute was to be applied in cases of bombings, or other crimes involvings as kidnapping or armed robbery of a great number of people.

After listing the aggravating circumstances, the trial judge found only one mitigating circumstance; that the petitioner had no significant

history of prior criminal activity (TR. 1191).

The trial judge gave no weight to testimony concerning petitioner's psychological difficulties (TR. 1191).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Petitioner's contention that Alabama's procedure for trial and sentence in capital felony cases violates the United States Constitution was raised before the trial in motions to quash the indictment (TR. 1132), which the trial judge denied; petitioner's counsel also made a motion for bifurcated trial (TR. 137) which was denied by the trial court. Petitioner pressed these constitutional objections and other objections based on state-law grounds before the Alabama Court of Criminal Appeals, which rejected them on merits in a lengthly opinion (Appendix B), and in his petition to the Alabama Supreme Court, which affirmed the Court of Criminal Appeals (Appendix A) and rejected petitioner's federal constitutional arguments on the authority of a prior decision.[2]

REASONS FOR GRANTING THE WRIT

I.

ALABAMA'S PRECLUSION OF A LESSER INCLUDED OFFENSE INSTRUCTION IN CAPITAL CASES VIOLATES PETITIONER'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

This case squarely presents the "difficult constitutional questions" which this Court in Keeble v. United States, 412 U.S. 205, 213 (1973), stated as raised by statutory preclusion of an instruction that a jury may find a defendant guilty of a lesser included offense. These constitutional questions are even more serious where, unlike Keeble (a non-capital case), the statute gives the jury the alternatives of findings the defendant guilty of a capital offense, leading to a death sentence, or allowing him to be fully exonerated where there is strong evidence that he is guilty of a serious -- but non-capital -- offense.

Keeble, which held that the federal Major Crimes Act could not be construed to preclude a lesser-offense instruction, summarized the vital protection afforded such an instruction as follows:

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[2] Jacobs v. State, 361 So.2d. 640 (Ala. 1978), cert, denied, 99 S.Ct. 1034 (1979)

> "True, if the prosecution has not established beyond a reasonable doubt every element of the offense charged, and if no lesser offense instruction is offered, the jury must, as a theoretical matter, return a verdict of acquittal. But a defendant is entitled to a lesser offense instruction -- in this context or any other -- precisely because he should not be exposed to the substantial risk that the jury's practice will diverge from theory. Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction." 412 U.S. at 212-13.

Similarly, the plurality opinion in Gregg v. Georgia, supra, held that a criminal justice system which among other things precluded lesser-offense instructions "would be totally alien to our notions of criminal justice" and "would be unconstitutional." 428 U.S. at 199-200, no.50. In rejecting the argument that availability of a lesser-offense instruction provided criminal juries with too much discretion to satisfy the concerns set forth in Furman v. Georgia, 408 U.S. 328 (1972), the Court in Gregg eliminated any doubt as to the constitutional importance of preserving a capital defendant's right to such an instruction.

Petitioner's rights at trial to fair jury fact-finding on the issue of guilt were severly underminded by the unavailability of a lesser-offense instruction. Under Alabama law applicable in non-capital cases, there is no question that a defendant would have been entitled to such an instruction, § 15-17-1 Code of Alabama, 1975. Under Alabama's death penalty statute, which prohibits such instruction, § 13-11-2(a) Code of Alabama, 1975, the jury was given an all of nothing choice on the question of petitioner's guilt.

A. DUE PROCESS

The statute's preclusion of lesser-offense instructions jeopardizes the fundalmental fairness of capital trials in Alabama. It necessarily undermines a capital defendant's presumption of innocence and dilutes the requirements that he be found guilty beyond a reasonable doubt. By precluding a finding of guilt on an intermediate offense, the Alabama law placed an intolerable strain on the jury's ability to make a fair finding on the issue of guilt or innocence in a capital case.

This Court has ruled consistently that the due process clause necessitates stringent safeguards in criminal cases to minimize the margin

for erroneous convictions. Thus, in In re Winship, 397 U.S. 358 (1970), the court held that the "beyond-reasonable-doubt standard" itself was constitutionally required lest there be "doubt whether innocent men are being condemned" and in order to establish "confidence" that a jury's finding of guilty has been made with "utmost certainty,"

The consideration set forth in Winship underscore the need for lesser-offense instructions in capital cases, particularly where there is strong evidence that the defendant is guilty of a serious lesser crime. Keeble expressly recognized the "substanial risk" that foreclosure of a lesser-offense instruction may induce fact-finding error on the part of even the most conscientious juror. Moreover, without such an instruction, the prospect of acquittal is likely to be so repulsive that convictions on the offense charged may seem the only alternative even where, there is a serious as to the defendant's guilt on the greater charge.

Since Winship, this Court has sharply scrutinized federal and state criminal procedures to insure that the defendants' presumption of innocence is not impaired and the risk of conviction increased by impermissible influences on jurors' judgment.

Alabama's absolute rule against consideration of a lesser-offense finding jeopardizes capital defendants' rights at least as much as the practices invalidated in the post-Winship line of cases, none of which involved a capital offense. By ordering the jury to chose among extremes, Alabama's laws erects an "artificial barrier" to fair fact-finding on the issue of guilt. Cool v. United States, supra, 409 U.S. 100 (1972). Particularly impermissible. Gregg v. Georgia, supra, 428 U.S. at p.187. ("when a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed").

Since Alabama's decision to preclude lesser-offense instructions in capital cases, starling results have been achieved. During the first 33 months of the law's operation, Alabama presecutors attained a 96% conviction rate in capital cases where the defendant pleaded not guilty and 82% death sentence rate where the jury rendered a verdict of guilty. These facts underscore the need for this Court to review Alabama's decision to preclude lesser-offense

instructions in capital cases.

B. EQUAL PROTECTION

Alabama's laws also raises a serious question under the equal protection clause. Since non-capital defendants in Alabama continued to have the safeguard of a lesser-offense instruction, the law singles out capital defendants and thereby burdens their fundamental right, recognozed in Winship and Keeble, to unprejudiced jury fact-finding on the issue of guilt.

Because of its discriminatory impact on this fundamental right, the statute must be strictly scrutinized to determine whether it is "necessary to promote a compelling governmental interest." Shapiro v. Thompson, 394 U.S. 618, at 634 (1969).

The only interest that Alabama has asserted in support of the statute's preclusion of lesser-offense instructions in capital cases is the need to comply with this Court's ruling in Furman by controlling undue jury discretion and nullification in capital cases. This objective is insufficient to sustain the law. Gregg and its companion cases squarely held that the concerns expressed in Furman for consistently-applied capital sentencing could be satisfied by capital punishment statutes which permit juries to receive lesser-offense instruction on the issue of guilt. The Gregg plurality opinion of Justices Stewart, Powell, and Stevens stated that elimination of lesser-offense instructions would be "totally alien to our notions of criminal justice" 428 U.S. at 199-200, n.50. Thus, as demonstrated by the Georgia, Florida, and Texas statutes upheld by this Court, there is no need to interefere with the jury's guilt-finding process in order to comply with Furman. These states' laws established that there is a less restrictive means available to meet Alabama's objective of having a capital sentencing structure that is consistent with the Constitution.

It would be inconsistent with this Court's rulings in Gregg, Proffitt and Jurek to conclude that Alabama's law is "necessary" to promote the objective of consistent capital sentencing. Nor is the preclusion of lesser-offense instructions the least burdensome means of promoting those goals. Accordingly, under established prcedents of this Court, there is a serious question as to whether the statute voilates the equal protection clause.

In conclusion, Alabama's decision to abolish lesser-offense instructions in capital cases constitutes a serious misreading of Furman and

deprived petitioner of a fair trial.

II.

ALABAMA'S REQUIREMENT THAT JURIES MUST IMPOSE A DEATH SENTENCE WITHOUT CONSIDERATION OF MITIGATING CIRCUMSTANCES VIOLATES THE DUE PROCESS CLAUSE AND THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE

Unlike any death penalty statutepreviously upheld by this Court, Alabama's death penalty law specifically precludes the jury from considering aggravating or mitigating circumstances relevant to the issue of whether the death penalty should be imposed. Once the jury makes a finding of guilt, the statute requires that "it shall fix the punishment at death." §13-11-2(a) Code of Alabama 1975. Aggravating or mitigating circumstances are considered only by the trial judge at a subsequent hearing at which he decides whether to "refuse to accept the death penalty as fixed by the jury or sentence the defendant to life imprisonment without parole." §13-11-4. Code of Alabama (1975)

These provisions raise serious constitutional questions which this court has yet to decide.

First, by failing to permit the jury to consider aggravating and mitigating circumstances before imposing setentce, the Alabama law is contrary to this Court's pronoucements on the vital role of the jury in the death sentencing process. Thus, in Witherspoon, the Court stressed that juries "express the conscience of the community on the ultimate question of life or death" and must not be "organized to return a verdict of death".

Under this line of cases, Alabama's law raises a serious constitutional question because it does not allow th jury to "express the conscience of the community" in the light of evidence of aggravating or mitigating circumstances relevant to the life-death determination. Rather, Alabama's law strips defendants of the vital constitutional safeguards afforded by the jury's "common-sense judgment" Duncan v. Louisiana, 391 U.S. 145, 156 (1968) and its capacity to "maintain a link between comtemporary community values and the penal system." Woodson v. North Carolina, supra, 428 U.S. at 295.

Alabama's requirements that juries "shall" impose a death sentence upon finding of guilt is also at odds with the premies which underlie the Woodson ruling. Woodson stressed that jurors have an "aversions . . . to mandatory death penalty statutes shared by society at large." 428 U.S. at p.

295. Woodson also states that "under contemporary standards of decency, death is viewed as an inappropriate punishment for a substanial portion of convicted first-degree murders." 428 U.S. at 296. Woodson's holding that it was unconstitutional to eliminate any chance for this societal outlook to be expressed in the sentencing process applies equally to Alabama's jury sentence provision.

Granting Alabama trial judges power to reverse the jury's initial mandatory sentence does not remedy this defect anymore adequately than appellate review of sentence would have saved the statutes invalidated in Woodson and Roberts v. Louisiana, 428 U.S. 325 (1976). In either situation, input of "contemporay community values" at the grassroots level is impermissibly curtailed.

It is true that in Proffitt v. Florida, 428, U.S. 242, 252 (1976), this court stated that "it has never suggested that jury sentencing is constitutionally required." 428, U.S. at 252. But Alabama's provisions for jury sentencing is radically different from the Florida law upheld in Proffitt. The Proffitt ruling was based on the premise that Florida juries play an important role in sentencing by considering the same aggravating and mitigating circumstances as the judge, and by making an advisory recommendation to the judge. 428 U.S. at 248. Alabama's law give no such role to the jury but instead injects the jury into the sentencing process with allowing it to consider mitigating and aggravating circumstances contrary to this Court's ruling in Woodson and Roberts.

Second, even of one assumes that there is not need for jury participation in capital sentencing, Alabama's law raises the question whether, in the event a state opts for jury participation, it can foreclose the jury from consideration of mitigating and aggravating circumstances. This issue has never been decided by this Court.

An Alabama capital jury's mandatory sentence is a meaningful and significant part of the sentencing procedure. It must necessary affect the trial judges affirmed juries' mandatory death sentences in 37 of the first 45 cases after Alabama's law went into effect there is a solid reason to believe that the law has none of the benefits of judge-imposed sentencing noted in Proffitt, 428 U.S. at 252-53, and contains many of the defects of mandatory sentencing invalidated in Woodson.

This case squarely presents the question which this Court reserved in Lockett, namely, what role, if any, the jury may play in capital sentencing. 98 S.Ct. at 2967, no.16.

III.

ALABAMA'S DEATH PENALTY STATUTE VIOLATES THE DUE PROCESS CLAUSE BECAUSE IT POSTPONES CONSIDERATION OF SENTENCE UNTIL THE JURY HAS MANDATORILY MADE AN INITIAL DETERMINATION THAT THE DEATH SENTENCE "SHALL" BE IMPOSED.

By postponing the trial judge's consideration of aggravating and mitigating circumstances until after the jury has imposed its own unguided mandatory sentence, Alabama's law infringes petitioner's rights to an unprejudiced, passion-free sentencing determination before the judge.

This Court has long stressed the importance, particularly in capital cases, of making all efforts to ensure that defendant are tried and sentenced in an atmosphere which appears free of undue passion and prejudice. Thus, Gardner v. Florida, 430 U.S. at 358, held that "it is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be based on reason rather than caprice of emotion."

Common-sense, as well as the 82% death sentence rate during the first 33 months of the Alabama's law operation, dictates that Alabama's trial judges' review of juries' initial death sentences cannot satisfy the requirement of a sentencing proceeding which is -- appear to be -- free of caprice and emotion.

There is no question that the jury's mandatory sentence in this case was a significant act which affected the trial judge's subsequent sentencing determination.

In these circumstances, Alabama's provision for the trial judge review of the jury's previous sentence cannot be squared for this Court's ruling on the need for maintaining the appearance of utmost independance, impartiality and dispassion in the part of the sentencing judges.

IV.

THE AGGRAVATING CIRCUMSTANCES PROVISION OF ALABAMA'S DEATH PENALTY STATUTE IS UNCONSTITUTIONALLY VAGUE AND HAD BEEN SO INCONSISTENTLY APPLIED THAT IT DOES NOT COMPLY WITH THIS COURT'S

FURMAN DECISION AND THE VOID-FOR-VAGUENESS DOCTRINE

The trial judge's decision to sustain the jury's death sentence rested in part on his findings, pursuant to the aggravating-circumstances provision of Alabama Law' §13-11-6 Code of Alabama 1975, that peititioner's crime was "especially heinous, atrocious, or cruel".

On its face, this aggravating -circumstance provision is so broad and vague that it raises a serious question as to whether it gave petitioner -- or any other Alabama capital defendant -- reasonable notice as to the circumstances under which he might receive a death sentence. As stated by one Alabama trial judge who refused to make an "especially heinous, atrocious, or cruel" finding in a recent capital case:

> "The capital felony was especially heinous atrocious, or cruel. Well, I didn't really know what they're talking about there. I'll say at best this fellow was totally senseless. I don't know about cruel, what people's different definitions of atrocious, heinous or cruel is - whether they're talking about torture or what, but if robbing somebody and taking their money and then shooting them through the heart is considered heinous then this crime was heinous. I don't know that's what they're talking about. I'll be honest with you, I really don't know." Ex parte Cook Alabama Supreme Court, No. 77-320,

In petitioner's case, the trial court found that his crime was "especially heinois" and the trial judge did not even consider the provision's ambiquity and invoked the provisions perfunctorily.

This desparity graphically demostrates that this provision has neen applied so inconsistently that Alabama's system for adjudicating captial cases has the same potential for caprious, discriminatory application that this Court condemned in Furman.

Appellate proceedings in this case provided no guidance as to the meaning of this provision. Moreover, unlike the appellate review of death sentence approved in Gregg v. Georgia, supra, 428 U.S. at 198, the Alabama appellate courts made no serious effort to ensure that the factual situation and aggravating circumstances in this case were similar to others where the death penalty was imposed.

In sum, Alabama's inability to apply this vague sentencing provision with any consistency underscores the need for this Court to

delineate the limits which the void-for-vaguness doctrine imposes on captial sentencing provisions.

V.

THE OVERALL OPERATION OF ALABAMA'S DEATH PENALTY STATUTE IS SO PREJUDICIAL TO PETITIONER'S RIGHTS AT BOTH THE GUILT AND SENTENCING STAGES THAT IT VIOLATES THE DUE PROCESS CLAUSE AND THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE.

This court has never departed from the principle announced in Witherspoon "that the decision whether a man deserves to live or die must be made on scales that are not deliberately tippered toward death." 391 U.S. at 521-22, no.20. In its overall operation, taking into account each successive stage of the trial, sentencing and appellate process. Alabama's death penalty statute offends this priniciple.

At each stage of Alabama's capital punishment proceedings, petitioner was deprived of significant procedural safeguards. At trial, the protection afforded by the beyond-reasonable-doubt standard was undermined because he could receive a lesser-offense instruction. Nor was petitioner given a chance to appeal to the juror's standards of decency with evidence of mitigating relevant to the issue of whether a death sentence should be imposed. The "conscience of the community" was effectively eliminated in petitioner's sentencing proceeding. The restraints imposed by Alabama's law meant that they jury acted as a 'tribunal organized to return a verdict of death" which is precisely what this Court condemned in Witherspoon, Woodson, and Roberts.

No capital punishment statute in any state other than Alabama imposes such servre restraints on the jury's capacity to find facts fairly on the issue of guilt and to express the community's standards of decency on the issue of the death sentence. Alabama's idiosyncratic death penalty statute is ever less representative of this nation's overall societal outlook on the issue of capital punishment than the several mandatory death penalty statutes invalidated by this Court's ruling in Woodson and successor cases.

Nor is Alabama's statute saved by its provision for review by the trial judge and the appellate courts of the jury's mandatory imposition

of the death sentence. During the first 33 months of the Alabama statutes operation, Alabama trial judges affirmed the sentences of 37 of the 45 capital defendants convicted and sentenced to death by the jury. This is a strong indication that the trial judges' decisions have been impermissibly influenced by the juries' initial mandatory sentences. It also confirms that Alabama's administration of capital punishment cannot be squared with this Court's view "that under comtemporary standards of decency, death is viewed as an inappropriate punishment for a substanial portion of convicted first-degree murders." Woodson vs. North Carolina, supra, 428 U.S. at 296.

Finally, as demonstrated in this case, Alabama's sentencing provisions with respect to aggravating circumstances is unduly vague and has been inconsistently applied by Alabama's trial and appellate courts. Alabama's appellate review of death sentences has neither cured the vaguness problem nor insured that death sentences are imposed with the rationality and fairness required by this Court's decisions in Furman, Gregg, Proffitt and Jurerk.

VI.

EVIDENCE OBTAINED FROM THE PETITIONER AFTER INDICTMENT BY SECRET INTERROGATION BY AN AGENT FOR POLICE OFFICER'S AND DISTRICT ATTORNEY VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT TO COUNSEL.

Petitioner was indicted by the Grand Jury of Houston County, Alabama at it's November Term, 1977. (TR 197-198). On or about July 12, 1978 and continuing until July 15, 1978, Donald Welch, a prisioner in the Houston County Jail, with incouragement and aid of the Sheriff of Houston County and various deputies and the District Attorney, solicited from petitioner certain incriminating evidence. On July 15, 1978, Welch was sent to talk with appellant in the Houston County Jail by Inspector Joe Pitts, District Attorney Tom Sorrells, Sheriff A. B. Clark and Wendel White, a police officer from the Dothan Police Department. At that time he had a radio transmitter concealed on Welch's person and a conversation between he and petitioner was received by members of the Sheriff's department and the District Attorney. (TR 741-743) At the trial, Welch and Inspector Pitts was allowed to testify over objection, to the conversation between Crawford and Welch. This Court held in Messiah v. United States, 377 U.S. 210, that any secret interrogations of a defendant from and after the finding of the indictment without the protection afforded by the presence of counsel, contravenes a basic dictates of fairness in the conduct of criminal cases and the fundamental rights of a person charged with a crime. The Court further held that any such interragation is a violation of the Sixth Amendment of the Constitution and is a very serious denial of the basic protection of the guarantees of the Constitution in that the person so interrogated does not even know that he is under interrogation.

The facts so presented clearly presents a question that this Court should review.

VII.

EXTRAJUDICIAL CONFESSIONS OBTAINED FROM APPELLANT WERE INADMISSIBLE IN THAT THEY WERE OBTAINED IN VIOLATION OF THE FOURTEETH AMENDMENT TO THE CONSTITUTION.

This Court stated in the case of Culombe v. Conneticut, 367 U.S. 568, that all of the surrounding circumstances of a confession, including the duration and conditions of the detention, the manifest attitude of the police toward the person confessing, his physical and mental state, the diversed pressure which sap or sustain his powers of resistance and self-control are relevant to the ulimate voluntariness of a confession.

In this case, Petitioner was taken into custody by deputies of the Houston County Sheriff's department at approximately 2:00 A.M. on October 7, 1977, at Flowers Hospital where he had been treated for a gun shot wound. (TR419) He was taken from the hospital directly to the County Jail, where he was turned over to an investigator of the Sheriff's office. (TR 428) At approximately 3:20 A.M. the investigator began interrogating petitioner. That questioning took place in the investigator's office which is approximately 18 by 20 feet. There were three deputy sheriffs in the room, one of which was in uniform with his weapon exposed. Petitioner was questioned by approximately eighteen minutes on that occasion. (TR 443)

Appellant was again questioned at 4:00 A.M. on the same morning At that time, there were two deputy sheriffs present, he was not warned of his Miranda Rights and proir to that time, petitioner had no sleep. Prior to this time of taking these statements petitioner was not advised that anyone had been shot or killed and he was only that he was under arrest for crimes that had been committed at his home.

Crawford was again brought to the investigator's office at approximately 2:45 P.M. on Sunday, October 8, 1977. At that time, both Investigator Joe Pitts and Chief Deputy Sheriff Runt Jones were present. They advised him of his rights and did not offer him any reward or coerce him in any way to make a statement. The investigator did not tell Crawford that he was under arrest for a capital offense or what the punishment for the offense was. From the time Crawford was initially arrested, he was kept in jail and other persons had access to him during that time. At no time while he was incarcerated in jail was an attorney called to assist him.

Crawford was held in custody for thirty-six hours and questioned continuously into the early hours of the morning. There were four different police officers present at the interrogations. Petitioner had been shot and he was clear from the circumstances that the confessions that he made were not freely and voluntarily given.

The Court held in Ashcraft v. Tennessee, 322 U.S. 143, that a conviction could not stand where a confession had been obtained after some thirty-six hours of continuous interrogation of a defendant by police. In effect, this Court ruled that extended questioning raises a conclusive presumption of coercion.

Petitioner would therefore assert that the foregoing facts would merit this Court taking jurisdiction of his case.

CONCLUSION

In view, of the foregoing consitutional issues petitioner would respectfully request this Court to take jurisdiction of this cause and issue a writ of certiorari to the Supreme Court of Alabama and thereby review the Judgement of conviction had below.

Respectfully submitted,

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Post Office Box 1690
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By: Samuel L. Adams

CERTIFICATE OF SERVICE

I, Samuel L. Adams, do hereby certify that I have on this day mailed a copy of the foregoing Petition For A Writ Of Certiorari To The Supreme Court of Alabama to the Honorable Charles A. Graddick, Attorney General, State of Alabama, 250 Administrative Building, Montgomery, Alabama 36101 this the 3rd day of March, 1980.

Samuel L. Adams

THE OPINION IN CRAWFORD V. ALABAMA HAS NOT BEEN FILMED. IT CAN BE FOUND AT 377 So. 2d 159.

13-11-1. Limitation on imposition of death penalty or life sentence without parole.

Except in cases enumerated and described in section 13-11-2, neither a court nor a jury shall fix the punishment for the commission of treason, felony or other offenses at death, and the death penalty or a life sentence without parole shall be fixed as punishment only in the cases and in the manner herein enumerated and described in section 13-11-2. In all cases where no aggravated circumstances enumerated in section 13-11-2 are expressly averred in the indictment, the trial shall proceed as now provided by law, except that the death penalty or life imprisonment without parole shall not be given, and the indictment shall include all lesser offenses. (Acts 1975, No. 213, § 1.)

13-11-2. Aggravated offenses for which death penalty to be imposed; felony-murder doctrine not to be used to supply intent; discharge of defendant upon finding of not guilty; mistrials; reindictment after mistrial.

(a) If the jury finds the defendant guilty, it shall fix the punishment at death when the defendant is charged by indictment with any of the following offenses and with aggravation, which must also be averred in the indictment, and which offenses so charged with said aggravation shall not include any lesser offenses:

(1) Kidnapping for ransom or attempts thereof, when the victim is intentionally killed by the defendant;

(2) Robbery or attempts thereof when the victim is intentionally killed by the defendant;

(3) Rape when the victim is intentionally killed by the defendant; carnal knowledge of a girl under 12 years of age, or abuse of such girl in an attempt to have carnal knowledge, when the victim is intentionally killed by the defendant;

(4) Nighttime burglary of an occupied dwelling when any of the occupants is intentionally killed by the defendant;

(5) The murder of any police officer, sheriff, deputy, state trooper or peace officer of any kind, or prison or jail guard while such prison or jail guard is on duty because of some official or job-related act or performance of such officer or guard;

(6) Any murder committed while the defendant is under sentence of life imprisonment;

(7) Murder in the first degree when the killing was done for a pecuniary or other valuable consideration or pursuant to a contract or for hire;

(8) Indecent molestation of, or an attempt to indecently molest, a child under the age of 16 years, when the child victim is intentionally killed by the defendant;

(9) Willful setting off or exploding dynamite or other explosive under circumstances now punishable by section 13-2-60 or 13-2-61, when a person is intentionally killed by the defendant because of said explosion;

(10) Murder in the first degree wherein two or more human beings are intentionally killed by the defendant by one or a series of acts;

(11) Murder in the first degree where the victim is a public official or public figure and the murder stems from or is caused by or related to his official position, acts or capacity;

(12) Murder in the first degree committed while the defendant is engaged or participating in the act of unlawfully assuming control of any aircraft by use of threats or force with intent to obtain any valuable consideration for the release of said aircraft or any passenger or crewman thereon, or to direct the route or movement of said aircraft, or otherwise exert control over said aircraft;

(13) Any murder committed by a defendant who has been convicted of murder in the first or second degree in the 20 years preceding the crime; or

(14) Murder when perpetrated against any witness subpoenaed to testify at any preliminary hearing, trial or grand jury proceeding against the defendant who kills or procures the killing of witness, or when perpetrated against any human being while intending to kill such witness.

(b) Evidence of intent under this section shall not be supplied by the felony-murder doctrine.

(c) In such cases, if the jury finds the defendant not guilty, the defendant must be discharged. The court may enter a judgment of mistrial upon failure of the jury to agree on a verdict of guilty or not guilty or on the fixing of the penalty of death. After entry of a judgment of mistrial, the defendant may be tried again for the aggravated offense, or he may be reindicted for an offense wherein the indictment does not allege an aggravated circumstance. If the defendant is reindicted for an offense wherein the indictment does not allege an aggravated circumstance the punishment upon conviction shall be as heretofore or hereafter provided by law; however, the punishment shall not be death or life imprisonment without parole. (Acts 1975, No. 213, § 2.)

13-11-3. Hearing as to imposition of death penalty or life sentence without parole after conviction; admissibility of evidence; right of state and defendants to present arguments.

If the jury finds the defendant guilty of one of the

aggravated offenses listed in section 13-11-2 and fixes the punishment at death, the court shall thereupon hold a hearing to aid the court to determine whether or not the court will sentence the defendant to death or to life imprisonment without parole. In the hearing, evidence may be presented as to any matter that the court deems relevant to sentence and shall include any matters relating to any of the aggravating or mitigating circumstances enumerated in sections 13-11-6 and 13-11-7. Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements; provided further, that this section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the state of Alabama. The state and the defendant, or his counsel, shall be permitted to present argument for or against the sentence of death. (Acts 1975, No. 213, § 3.)

13-11-4. Determination of sentence by court; court not bound by punishment fixed by jury.

Notwithstanding the fixing of the punishment at death by the jury, the court, after weighing the aggravating and mitigating circumstances, may refuse to accept the death penalty as fixed by the jury and sentence the defendant to life imprisonment without parole, which shall be served without parole; or the court, after weighing the aggravating and mitigating circumstances, and the fixing of the punishment at death by the jury, may accordingly sentence the defendant to death. If the court imposes a sentence of death, it shall set forth in writing, as the basis for the sentence of death, findings of fact from the trial and the sentence hearing, which shall at least include the following:

(1) One or more of the aggravating circumstances enumerated in section 13-11-6, which it finds exists in the case and which it finds sufficient to support the sentence of death; and

(2) Any of the mitigating circumstances enumerated in section 13-11-7 which it finds insufficient to outweigh the aggravating circumstances. (Acts 1975, No. 213, § 4.)

13-11-5. Conviction and sentence to death subject to automatic review.

The judgment of conviction and sentence of death shall be subject to automatic review as now required by law. (Acts 1975, No. 213, § 5.)

13-11-6. Aggravating circumstances.

Aggravating circumstances shall be the following:

(1) The capital felony was committed by a person under sentence of imprisonment;

(2) The defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person;

(3) The defendant knowingly created a great risk of death to many persons;

(4) The capital felony was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, rape, robbery, burglary or kidnapping for ransom;

(5) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(6) The capital felony was committed for pecuniary gain;

(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws; or

(8) The capital felony was especially heinous, atrocious or cruel. (Acts 1975, No. 213, § 6.)

13-11-7. Mitigating circumstances.

Mitigating circumstances shall be the following:

(1) The defendant has no significant history of prior criminal activity;

(2) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor;

(5) The defendant acted under extreme duress or under the substantial domination of another person;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and

(7) The age of the defendant at the time of the crime. (Acts 1975, No. 213, § 7.)

13-11-8. Appointment of experienced counsel for indigent defendants.

Each person indicted for an offense punishable under this provision of this chapter who is not able to afford legal counsel must be provided with court appointed counsel having no less than five years' prior experience in the active practice of criminal law. (Acts 1975, No. 213, § 8.)

13-11-9. Effective date.

This chapter shall become effective on March 7, 1976. (Acts 1975, No. 213, § 10.)

15-17-1. Verdict may be for lesser offense than charged; verdict for offenses included in offense charged.

When an indictment charges an offense of which there are different degrees, the jury may find the defendant not guilty of the degree charged and guilty of any degree inferior thereto o of an attempt to commit the offense charged; and the defendant ma also be found guilty of any offense which is necessarily included in that with which he is charged, whether it be a felony or a mis demeanor. (Code 1852, § 647, Code 1867, § 4199; Code 1876, § 4904; Code 1886, § 4482; Code 1896, § 5306; Code 1907, § 7315; Code 1923, § 8697; Code 1940, T. 15, § 323.)